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Attorneys for Defendant FACEBOOK, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANGEL FRALEY; PAUL WANG; SUSAN
MAINZER; JAMES H. DUVAL, a minor, by
and through JAMES DUVAL, as Guardian ad
Litem; and WILLIAM TAIT, a minor, by and
through RUSSELL TAIT, as Guardian ad
Litem; individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

FACEBOOK, INC., a corporation; and DOES
1-100,

Defendant.

Case No. CV-11-01726 LHK (PSG)

**DECLARATION OF MATTHEW D. BROWN
IN SUPPORT OF FACEBOOK, INC.'S REPLY
BRIEF IN SUPPORT OF MOTION FOR
PROTECTIVE ORDER**

Date: July 28, 2011
Time: 1:30 p.m.
Courtroom: 4
Judge: Hon. Lucy H. Koh
Trial date: None Set

1 I, Matthew D. Brown, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the State of California, and I am
3 admitted to practice before this Court. I am a partner with the law firm of Cooley LLP, attorneys
4 for Defendant Facebook, Inc. ("Facebook"). I make this declaration in support of Facebook's
5 Reply Brief in Support of Motion for Protective Order in this action. I have personal knowledge
6 of the facts stated in this declaration, and if called upon to testify, could and would competently
7 testify thereto.

8 2. Counsel for Facebook have conferred on multiple occasions with Plaintiffs'
9 counsel regarding discovery. Each time, we have taken the position that discovery should not go
10 forward until the Court determines whether Plaintiffs have any viable claims against Facebook.

11 3. On at least two occasions, counsel for Facebook have specifically informed
12 Plaintiffs' counsel that Facebook has a litigation hold in place covering the group of employees
13 Facebook believes may have relevant information.

14 4. For instance, counsel for the parties, including myself, had a telephone conference
15 call on May 18, 2011, in which we discussed a variety of issues, including those identified in
16 Federal Rule of Civil Procedure 26(f) and the Standing Order For All Judges Of The Northern
17 District Of California regarding joint case management statements. During that call, we informed
18 Plaintiffs' counsel that Facebook had already initiated a litigation hold among the relevant
19 employees and instructed them to preserve documents. We also told Plaintiffs' counsel, during
20 this call, that we believed discovery should be stayed until the Court ruled on Facebook's
21 anticipated motion to dismiss Plaintiffs' complaint and determined whether or not Plaintiffs had
22 any viable claims.

23 5. Later, on June 16, 2011, Cooley partner Jeff Gutkin and I met in person with
24 Plaintiffs' counsel, at their office in San Francisco. We again informed Plaintiffs' counsel that
25 Facebook had initiated a litigation hold among the relevant employees. During the June 16, 2011
26 meeting, we also reiterated our position that discovery should be stayed, and we specifically
27 informed Plaintiffs, in light of our disagreement over this issue, that Facebook intended to file a
28 motion for protective order.

6. Contrary to Plaintiffs' assertions, we have never told Plaintiffs' counsel that Facebook "could not take steps to talk to specific [Facebook employees], as it did not know what information would be relevant until the motion to dismiss had been decided." (Pls.' Opp'n to Mot. for Protective Order at 10.) We also never stated that we "could not know who needed to be contacted until [we] knew what discovery would be relevant—after the[] motion to dismiss was decided." (*Id.* at 6.) Additionally, we never told Plaintiffs' counsel that we considered the "passing on of Plaintiffs' letter regarding preservation to [Facebook] [] sufficient to satisfy Defendant's obligations." (*Id.*)

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 12, 2011 at San Francisco, California.

/s/ Matthew D. Brown
Matthew D. Brown

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